

POWDER RIVER BASIN RESOURCE COUNCIL

IBLA 95-683

Decided June 18, 1998

Appeal from a Decision of the Acting Deputy State Director, Mineral and Land Authorization, Wyoming, Bureau of Land Management, affirming a Decision Record/Finding of No Significant Impact of the Area Manager, Buffalo Resource Area, Wyoming, Bureau of Land Management, approving the Lighthouse Coal Bed Methane Project.

Affirmed.

1. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements–National Environmental Policy Act of 1969: Finding of No Significant Impact–Oil and Gas Leases: Drilling

BLM's decision to approve a comprehensive program for drilling coal-bed methane gas wells, absent preparation of an environmental impact statement, will be affirmed where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), BLM has taken a hard look at the environmental consequences of such program, has considered reasonable alternatives thereto, and Appellant does not demonstrate that BLM failed to consider a substantial environmental problem of material significance or otherwise failed to abide by the Act.

APPEARANCES: Randall Weiner, Esq., Boulder, Colorado, for the Powder River Basin Resource Council; Bruce C. Martens, President, and Charles W. Peck, Vice President, American Oil and Gas Corporation, Denver, Colorado, for Intervenor American Oil and Gas Corporation; John R. Kunz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Powder River Basin Resource Council has appealed from an August 4, 1995, Decision of the Acting Deputy State Director, Mineral and Land Authorization, Wyoming, Bureau of Land Management (BLM), affirming a June 20,

1995, Decision Record/Finding of No Significant Impact (DR/FONSI) of the Area Manager, Buffalo Resource Area, Wyoming, BLM, approving the Lighthouse Coal Bed Methane Project (Project).

The Project would be undertaken by the American Oil and Gas Corporation d.b.a. Martens & Peck Production Company (American), operator of the various Federal oil and gas leases covered by the Project. By Order dated December 5, 1995, we granted American's request to intervene in this appeal.

The Project is substantial in scope, involving the drilling of 100 methane gas wells on Federal lands over a 5-year period in the Powder River Basin in east-central Wyoming. An additional 100 wells would be drilled on interspersed lands where the gas is owned by State and private interests. The entire project, which would involve the wells, dozens of gathering facilities, and four central processing plants, all connected by miles of roads and pipelines, would be located within a 250-square mile area of mostly State and private surface estate.

In order to extract the gas entrapped in the Wyodak-Anderson coal seam underlying the affected lands, the seam must first be "dewatered," or have the water removed, so that the gas can flow to the surface. (Environmental Assessment (EA) at 9, 21.) The primary issue in this appeal is whether this activity is likely to drawdown the water level throughout the Wyodak aquifer, and adversely affect the ability of the owners of private wells to extract water from the aquifer for domestic and livestock use. Id. at 13-14, 24-25, 50.

In deciding whether to approve the proposed Project, BLM, as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), and its implementing regulations (40 C.F.R. §§ 1500.1-1517.7), prepared an EA, which analyzed the environmental consequences of the Project and alternatives thereto (including a no action alternative). Based on the EA, the Area Manager issued his June 1995 DR/FONSI, approving the Project and finding that no significant impact would result from its implementation.

Appellant sought State Director Review of the Area Manager's June 1995 DR/FONSI, pursuant to 43 C.F.R. § 3165.3(b), contending that BLM failed to analyze the potential impact to neighboring private landowners of a drawdown in the local groundwater supply from the proposed large-scale drilling program, did not consider a reasonable alternative providing for the sequential development of wells, and should have prepared an Environmental Impact Statement (EIS).

In his August 1995 Decision, the Acting Deputy State Director addressed each of Appellant's arguments, concluding that BLM had adequately considered the potential environmental impacts of approving the Project and reasonable alternatives thereto, and that, given the imposition of mitigation measures, had properly found that no significant impact was likely.

Appellant appealed the August 1995 Decision and filed a Petition to Stay its effect, which was denied by the Board's Order of December 5, 1995.

In its statement of reasons (SOR) for appeal, Appellant argues that the drilling program will result in a massive drawdown of groundwater in the Wyodak aquifer underlying the lands affected by the Project, thus diminishing or even eliminating the water supply to hundreds of private landowners in the area who use the water for domestic and livestock purposes. It asserts that these landowners will be required, at considerable expense, to drill and operate deeper wells in order to access additional water supplies, and that landowners who cannot afford such expense may be driven out of their homes and/or businesses.

Appellant contends that, although BLM recognized that the Project would likely result in a dramatic drawdown of the local groundwater supply affecting neighboring landowners, it violated section 102(2)(C) of NEPA by failing to consider the adverse economic impacts to these landowners and the local economy before deciding to approve the Project. (SOR at 9.) It also argues that BLM's failure to prepare an EIS, addressing this "potentially significant" impact, further violated section 102(2)(C) of NEPA. *Id.* at 14 n.4. In addition, it argues that BLM acted contrary to section 102(2)(E) of NEPA, as amended, 42 U.S.C. § 4332(2)(E) (1994), by failing to consider a reasonable alternative to the Proposed Action, i.e., "sequential development." (SOR at 16.) Appellant concludes that, due to BLM's failure to comply with NEPA, its decision to approve the Project is arbitrary, capricious, and not in accordance with the law, and must be set aside pursuant to section 10(e) of the Administrative Procedure Act, as amended, 5 U.S.C. § 706 (1994).

[1] It is well established that a BLM decision to proceed with a proposed action, absent preparation of an EIS, will be affirmed and held to be in accordance with section 102(2)(C) of NEPA where the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Cabinet Mountains Wildemess v. Peterson, 685 F.2d 678, 681-82 (D.C. Cir. 1982). An appellant seeking to overcome such a decision must carry its burden of demonstrating, with objective proof, that BLM failed to or did not adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wildemess Alliance, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993).

Where BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by actually taking a hard look at all of the environmental impacts of a proposed action, it will be deemed to have complied with the statute, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial

review). Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227-28 (1980). As we said in Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990):

[Section 102(2)(C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

In the present case, BLM assessed the impact of the overall Project on the quantity of groundwater in the Wyodak aquifer. It did so using a computer modeling analysis, developed by the U.S. Geological Survey, which, in essence, assumed a worst case scenario. See Assessment of Groundwater Impacts Related to the Proposed Lighthouse Coal Bed Methane Project, dated Jan. 20, 1994. BLM reported that the accuracy of the model was supported by initial monitoring of the Marquiss Project. (Response to Appellant Comments at 2; Decision at 3.) The model projected a maximum drawdown of water in the aquifer of at most 150 feet near the very center of the project area, but generally on the order of from 125 to 75 feet within most of that area. (EA at 51.) Within 6 miles of the project area, the drawdown is expected to generally range from 50 to 5 feet. Id. However, a drawdown of from less than 100 to 50 feet could extend well north of the project area. Id. BLM expected all of this to occur regardless of whether the Federal wells were drilled, since American would have to draw down the water level in the aquifer to the same point, in order to make the interspersed State and private wells productive of gas. (DR/FONSI at 3; Response to Appellant Comments at 1.)

BLM further expected that only those private water wells actually drilled into the Wyodak aquifer would be affected by a drawdown, since the coal seam was known to be separated from the rest of the Fort Union and other formations by impermeable shale and thus a drawdown in that aquifer would generally not affect other aquifers. (EA at 26, 29, 50.) BLM noted that the lack of any "interaquifer communication" was supported by actual experience with nearby coal-bed methane production, which dated back to 1989. Id. at 50; Response to Appellant Comments at 1-2.

BLM next estimated that there were 87, out of 1,450, private wells drawing water from the Wyodak aquifer for domestic (9) and livestock (76) purposes. (EA at 24-25.) It recognized that the drawdown might adversely affect these wells by drawing the water down below the level at which they penetrated the aquifer. Id. at 50, 58. However, BLM could not determine the precise impact at any given well in the absence of information regarding the exact location of American's gas wells, which would not be determined until American identified the specific targets of its drilling activity. Once the location was identified, American would submit applications for permit to drill (APD's) and BLM would prepare site-specific

EA's and approve or deny the APD's. The specific impact at each well would depend on its proximity to the gas wells, its completed depth, and the water yield necessary to maintain it as a usable source. Id. at 50.

However, BLM concluded that the impact on these well owners generally would be "insignificant because water will still be available from the coal [aquifer] at a deeper depth and from shallower or deeper aquifers." Id. (emphasis added.) Thus, even in the case of wells specifically affected by a drawdown, BLM did not anticipate that any of them would lose the ability to produce the amount of water that they had historically yielded. Id.; Decision at 2, 3. Thus, BLM deemed the overall impact on the well owners insignificant. (EA at 50; DR/FONSI at 1; Decision at 2, 3.)

If withdrawals affected historic yield, BLM stated that substitute water from the other aquifers or elsewhere would be made available at no cost to the affected landowner. (EA at 58; DR/FONSI at 3; Decision at 2, 3.) Thus, BLM concluded that "[m]itigation measures are in place to ensure that the historical yield is upheld for all wells in the vicinity of the project." (Decision at 3.)

Appellant contends that BLM's analysis of the impact of the Project on the local groundwater supply is inadequate because BLM failed to "identify, quantify[,] or otherwise account for," and thus to fully appreciate, the economic impact of a drawdown on the neighboring landowners. (SOR at 12; see id. at 7-9; Reply at 2-3.) Appellant submits the statements of a number of landowners, who assert that a drawdown, even on the order of 5 feet, will require them to drill one or several new wells or to redrill existing wells to a deeper depth. They state that their inability to pay the drilling costs of \$2,500 to \$5,000 per well may force them out of their homes and/or businesses. (SOR at 8; Exs. 5 through 11 attached to SOR.)

We agree that BLM did not spell out, in specific dollar amounts or otherwise, the economic impact to individual landowners or to the landowners as a group. However, it clearly recognized that there would, generally speaking, be an economic cost to landowners from a drawdown caused by the Project. (EA at 13-14, 24-25, 41-42, 50, 58; Answer at 8-9.) BLM expressly noted that "[w]ells fully penetrating the coal [aquifer] with pumps set low within the [aquifer] are likely to be less impacted than those only partially penetrating the [aquifer] and with relatively shallow set pumps." (EA at 50.) In addition, BLM was more specifically apprised of the cost, prior to making its decision to proceed with the Project, by the comments submitted by Appellant in response to issuance of the EA. (Letter to BLM, dated May 15, 1995, at 2; DR/FONSI at 2.)

BLM also recognized that there might be a significant adverse impact to the quantity of groundwater available at one or several wells drilled in the Wyodak aquifer, which it could not have anticipated with its computer modeling analysis. (Decision at 2.) Thus, BLM proposed that American, together with BLM, would, using new or existing wells in and around the project area, closely monitor groundwater supplies and the resulting impact

on well production from development of the Project. (DR/FONSI at 3; EA at 13-18, 58.) Further, upon detecting such an adverse impact to production, action would immediately be taken to mitigate it, as follows:

Mitigation of these impacts in accordance with [S]tate law will be accomplished if well yields are reduced below historic production levels. If mitigation is required, it would be developed by the BLM in consultation with the Wyoming State Engineer, the affected landowner[,] and [American] on a case-by-case basis. Possible ways in which mitigation would be accomplished at the cost of the operator are: temporary replacement with commercially purchased water, with water produced by the operator, or by reimbursing a well owner for increased pumping costs associated with a greater lift. Permanent replacement would be done by drilling a replacement well.

(Decision at 2 (quoting from DR/FONSI at 4); see EA at 58; Answer at 12-13.)

Appellant objects to BLM's monitoring program, arguing that it is designed to assess the impact of the Project on groundwater supplies after the Project has been approved and implemented, rather than during the environmental review process, as required by section 102(2)(C) of NEPA. (SOR at 13-14.) It asserts: "In other words, BLM has approved the methane gas well drilling and massive dewatering without knowing what the effects might be, but with the intention of placing monitoring wells in the future so that the project's impacts can then become known." Id. at 14.

We disagree with Appellant's assessment of BLM's proposed monitoring program. BLM is aware of the expected impact of the Project generally on local groundwater supplies, due to the computer modeling analysis. No such analysis was done in Powder River Basin Resource Council (Powder River), 120 IBLA 47 (1991), which also involved a large-scale coal-bed methane project, encompassing a 2,160-square mile area. Consequently, we concluded in that case that this deficiency could not be resolved by monitoring undertaken after approval of the project. Id. at 56-60. As we said: "BLM's EA makes it explicitly clear that BLM does not know how significant the groundwater impacts will be." Id. at 62.

Here, the only uncertainty concerns the specific impact on the groundwater supplies available to individual well owners. Monitoring will provide that information, for the specific purpose of guiding efforts to mitigate any particular significant adverse impacts. (Decision at 2, 3; DR/FONSI at 3; EA at 58.) Such monitoring is permissible under section 102(2)(C) of NEPA. 40 C.F.R. § 1505.2(c); Friends of the Payette v. Horseshoe Bend Hydroelectric Co., 988 F.2d 989, 993-94 (9th Cir. 1993).

Next, Appellant characterizes BLM's reliance on the State Engineer in its mitigation plan as "an illusory measure," arguing that in order to take action pursuant to WYO. STAT. § 41-3-911 (1982), he would need to know the

identity of the lessee causing a drawdown in a specific well. Appellant asserts that such identification would be difficult, given the large number of wells being operated. (SOR at 10-11.) Also, Appellant avers that the process of obtaining redress under State law will be long and drawn-out, perhaps taking years. Id. at 11. Moreover, Appellant argues that the plan was previously rejected by the Board in Powder River, 120 IBLA at 61, where we held that a landowner's right to look to the State Engineer for relief does not constitute mitigation to avoid the initial occurrence of the significant impact. (SOR at 9.)

In Powder River, the Board concluded that the record did not support BLM's finding that a potentially significant impact to local groundwater supplies would be avoided by its proposed mitigation plan. 120 IBLA at 61. However, in that case, BLM's plan did not require the oil and gas operator to reduce or eliminate the impact to affected landowners arising from a drawdown in their groundwater supplies. Rather, BLM had only suggested that this occur, leaving it to individual landowners to seek redress from the operators or, if necessary, by resort to the State Engineer. Id. at 58-59, 61. Thus, we held that BLM had failed to make a convincing case that a potentially significant impact to landowners would be avoided by the adoption of BLM's proposed plan. Id. at 61-62. Instead, BLM had left open the very real likelihood that there would be such an impact, which was not addressed by BLM in an EIS, thus violating section 102(2)(C) of NEPA. Id.

Here, BLM's proposed mitigation plan is not merely a course of action which the oil and gas operator is encouraged to follow. Rather, BLM requires that the operator reduce or eliminate a significant adverse impact to an affected landowner from a drawdown of the water in his/her well: "Mitigation * * * will be accomplished if well yields are reduced below historic production levels." (Decision at 2 (quoting from DR/FONSI at 4), emphasis added.)

The precise means taken by the operator are left to BLM's final determination at the appropriate time. Thus, BLM has not spelled out exactly how it will mitigate any significant adverse impacts at specific water wells, leaving it to a "case-by-case" determination. (Decision at 2.) We find no fault with this realistic, flexible approach. It properly recognizes the undeniable fact that it is impossible to know, before its initiation, the precise effects of the Project on individual wells and the appropriate remedies for any such impacts. Nothing more is required by section 102(2)(C) of NEPA. Scientists' Institute for Public Information v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

Moreover, implementation of its proposed mitigation plan does not require any action by the State Engineer. BLM properly recognized that the State Engineer, to the extent that he/she is responsible under State law for resolving disputes regarding withdrawals of water, should be involved in the process of resolving such matters in the context of the instant Project. (Decision at 2; DR/FONSI at 3; EA at 58; Answer at 13)

n.15, 14 n.18.) However, implementation of the mitigation plan is not dependent upon any affected landowner seeking redress from the State Engineer.

Rather, the plan simply provides that, once the State's legal threshold of overall historical yield from the aquifer is exceeded, the operator must reduce/eliminate the adverse impact to any individual landowner's water supply; this is accomplished by replacing that supply at no cost to the landowner, and includes drilling an existing or a new well to a greater depth, if necessary, in order to access a secondary aquifer. (Decision at 2; DR/FONSI at 4; EA at 58.) BLM will ensure that this happens. (Answer at 13 n.15.) In these circumstances, mitigation does not depend upon the voluntary action of a third party. This fact alone distinguishes Powder River.

Further, BLM provides that the operator is bound to take the required mitigation action, regardless of whether the person or entity (Federal, State, or private) who is responsible for the water loss can be identified and assigned blame under State law. (Decision at 2.)

Appellant, however, asserts that affected landowners will not receive "any relief at all until the aquifer they (and the Lighthouse [P]roject) are tapping is completely dry." (SOR at 11.) It notes that BLM has provided that mitigation, in the form of the replacement of water supplies, will occur when "well yields are reduced below historic levels." Id. at 12 (quoting from EA at 58). Appellant states that such levels are set by the State Engineer, and are not at the current level the well owner is obtaining groundwater. Since individual well owners are not entitled to production from any particular depth, Appellant reasons that a drop in the level of the water of 5 or more feet, which places it beyond the reach of existing wells, will not trigger any mitigation. (SOR at 12.) Rather, it states: "Only if the Lighthouse [P]roject dewateres the entire aquifer will well-owners be able even to seek any mitigation under the concept of 'historic yield.'" Id.

It is clear from the record that BLM provided, under its proposed mitigation plan, for the replacement of diminished/eliminated water supplies affected by a drawdown of water caused by the Project when production from any well is reduced below "historic levels." (EA at 58; see Decision at 2; DR/FONSI at 4.) As the Acting Deputy State Director stated: "[W]ell owners cannot be denied their historical yield from their wells. * * * [Thus,] [m]itigation measures are in place to ensure that the historical yield is upheld for all wells in the vicinity of the project." (Decision at 2-3.)

BLM acknowledges, on appeal, that Appellant's understanding of the meaning of "historic levels," and thus what is necessary to trigger mitigation, is correct. (Answer at 15-17.) It notes that each individual well owner's entitlement is dependent on the historic depth at which water has

been removed from the entire aquifer. Thus, BLM indicates that it has provided, as a condition of approving the Project, that, when each well falls below its particular historic yield, replacement would not occur in order to make up for the deficiency at that well until the overall threshold is exceeded. Thus, American will not be required to replace diminished/eliminated water supplies until none of the wells accessing the aquifer, at whatever depth, yields any water and thus the aquifer is essentially dry. BLM asserts that this State law, which is controlling, renders it powerless to avoid that result. Id. at 17-18; Response to Appellant Comments at 3.

At the outset, there is no dispute that State law provides that an individual well owner is not entitled to any particular depth of water in his/her well "higher than that required for maximum beneficial use of the water in [his/her] source of supply," and, thus, is entitled to relief from an offending water appropriation only once he/she is not able, at all, to obtain such use, by drilling deeper or taking other action to obtain water from that source. WYO. STAT. § 41-3-933 (1982). Further, it is clear that, given this state of the law, the various landowners affected by a drawdown of water in the Wyodak aquifer will be required to pay the cost of deepening their wells or drilling new wells to a greater depth in that aquifer, with no reimbursement from American or other mitigation under the plan envisioned by BLM. BLM was aware of these facts, but admittedly did not disclose the precise economic impact of a drawdown on individual well owners. (Answer at 8-9.)

The overriding question is whether it was necessary to discuss the economic consequences of a drawdown for the individual well owners in the EA, failing which BLM could be said to have violated the requirements of section 102(2)(C) of NEPA. We find no violation.

Appellant maintains that BLM must disclose the particular impact of the Project on the owner of each of the 87 private wells that obtain water from the Wyodak aquifer to comply with section 102(2)(C) of NEPA. Thus, Appellant suggests that BLM must disclose exactly how much the water will be drawn down in each well, and the precise economic cost to the affected private owner of deepening the existing or drilling a new well.

What Appellant overlooks, however, is that the information disclosed by BLM in its EA is sufficient for NEPA purposes. BLM has projected that there will be a drawdown within and surrounding the project area. See EA at 51. Thus, depending on the location of the individual well (of which BLM was aware, id. at 24), the impact on that well, in terms of the expected drawdown, is effectively disclosed. BLM did not reveal the specific economic consequences of the drawdown to the individual well owner. However, it was clearly aware of those consequences as a general matter. It was simply not required to lay out the precise impact to each owner. That would clearly have constituted "exhaustive detail," which need not be set forth in an EA, especially since we are not persuaded that it

was necessary to allow BLM to make an informed decision about whether the impact was likely to be significant. Don't Ruin Our Park v. Stone, 802 F. Supp. 1239, 1247 (M.D. Pa. 1992). As the court explained:

An EA need not discuss the merits and drawbacks of the proposal in exhaustive detail. By nature, it is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises. If it were, there would be no distinction between it and an EIS. Because it is a preliminary study done to determine whether more in-depth study analysis is required, an EA is necessarily based on "incomplete and uncertain information." Blue Ocean Preservation Society v. Watkins, 767 F.Supp. 1518, 1526 (D. Hawaii 1991) * * *. So long as an EA contains a "reasonably thorough discussion of . . . significant aspects of the probable environmental consequences," NEPA requirements have been satisfied. Sierra Club v. United States Department of Transportation, 664 F.Supp. 1324, 1338 (N.D. Ca. 1987) * * * quoting Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

Id. at 1247-48, footnote deleted; see 40 C.F.R. § 1508.9. We hold that the EA at issue here comports with that standard.

It must be remembered that the overriding purpose of an EA is to ascertain whether there will be a significant impact, thus requiring preparation of an EIS. Here, BLM concluded that there will be no significant impact unless all of the landowners obtaining water from the Wyodak aquifer are affected by a total drawdown of the aquifer; in that event, the impact will be avoided because BLM's mitigation plan ensures that the water supply of all of the landowners is replaced at no cost to them. (Decision at 2, 3.) While a drawdown which causes the water level to fall below the depth of an existing well will undoubtedly cause an economic impact, Appellant fails to demonstrate that such impact constitutes a potentially significant impact, under the standard enunciated in 40 C.F.R. § 1508.27. See, e.g., Glacier-Two Medicine Alliance, 88 IBLA 133, 140-47 (1985).

Moreover, BLM is not required to go further and ensure, under the guise of preparing a mitigation plan that comports with section 102(2)(C) of NEPA, that private landowners are afforded more substantive protection than they would normally have under State law, which is essentially what Appellant and its members seek. See Exs. 5-7, 10-12 attached to SOR.

Next, Appellant contends that BLM violated section 102(2)(E) of NEPA by failing to consider all reasonable alternatives to the Proposed Action. It specifically argues that BLM's failure to consider the alternative "of drilling fewer wells in a sequential manner," thus adjusting the manner and pace of development within the overall project area, was expressly found by the Board, in Powder River, to have violated that statute. (SOR at 15; see id. at 15-16 (citing Powder River, 120 IBLA at 53-55).)

BLM is required by section 102(2)(E) of NEPA to consider reasonable alternatives to a proposed action, which will accomplish its intended purpose and yet have a lesser or no impact. 40 C.F.R. §§ 1501.2, 1502.14, and 1508.9; Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815 (9th Cir. 1987), rev'd on other grounds, 490 U.S. 332 (1989). BLM must ensure that the decisionmaker "has before him and takes into proper account all possible approaches to a particular project." Calvert Cliffs' Coordinating Committee v. United States Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971). However, BLM is only required to consider lesser alternatives which, because of their distinguishing nature and extent, have different impacts on the environment. Headwaters v. BLM, 914 F.2d 1174, 1180 (9th Cir. 1990). Where, however, a proposed alternative would not substantially differ from an alternative already considered by BLM, there is no need to specifically address it, since BLM is already aware of its environmental impacts, and thus the consequences of adopting it. As the court stated in Headwaters: "NEPA does not require a separate analysis of alternatives which are not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences." 914 F.2d at 1181.

As BLM properly notes, the drilling of 100 wells on Federal mineral estate lands over the course of 5 years is itself a sequential development alternative. (Decision at 3; Answer at 27.) The EA specifically provides that the project "would be phased in through time and geography," such that between 25 and 50 wells would be drilled each year, running from north to south across the project area, and, of that number, about half would be Federal wells. (EA at 7; see Attachment to Letter to BLM from American, dated July 9, 1994, at 1.)

The instant case is distinguishable from that in Powder River. In that case, the proposed action permitted 500 of the proposed 1,000 wells of the coal-bed methane development to be drilled in the first of 5 years. 120 IBLA at 50. We noted that, although BLM anticipated that only 50 wells would actually be drilled, "the EA establishes no * * * limit on the number of wells to be drilled [during that time period]" and "expressly declines to analyze an alternative * * * under which development would be staggered." Id. at 53. We concluded that such alternative was reasonable, and that BLM's determination that it had no legal basis to consider it violated section 102(2)(E) of NEPA. Id. at 54-56. In the instant case, BLM actively considered staggered development and incorporated it in the Proposed Action.

Further, while BLM anticipates that less than 100 Federal wells will ultimately be drilled, it admittedly did not consider the environmental impacts of any alternative involving the drilling of fewer than 100 wells, finding simply that such impacts "would be less than the Proposed Action." (EA at 18.) We find no fault with this approach.

In summary, we conclude that the record establishes that the Area Manager properly determined that there will be no significant impact from

approving the Project, since BLM has, considering all relevant matters of environmental concern, taken a hard look at potential environmental impacts and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by adoption of the identified mitigation measures. See Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991).

Moreover, Appellant has simply not carried its burden to demonstrate, with objective proof, that BLM failed to or did not adequately consider a substantial environmental problem of material significance to the Proposed Action or otherwise failed to abide by section 102(2)(C) of NEPA. See Southern Utah Wilderness Alliance, 127 IBLA at 350, 100 I.D. at 380. The fact that Appellant has a differing opinion about likely environmental impacts or prefers that BLM take another course of action does not show that BLM violated the procedural requirements of NEPA. See San Juan Citizens Alliance, 129 IBLA 1, 14 (1994).

Therefore, we conclude that the Acting Deputy State Director's August 1995 Decision affirming the Area Manager's June 1995 DR/FONSI was proper and must be affirmed.

To the extent Appellant has raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge

